

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
:
UNITED STATES OF AMERICA :
: **NOLLE PROSEQUI**
- v. - :
: 21 Cr. 138 (LGS)
JOHN DAVID MCAFEE, :
: Defendant. :
:----- x

1. The filing of this *nolle prosequi* will dispose of the charges filed against JOHN DAVID MCAFEE, the defendant, in this case.

2. On March 2, 2021, Indictment 21 Cr. 138 (LGS) (the “Indictment”) was returned, charging JOHN DAVID MCAFEE, the defendant, in the following seven counts:

a. Commodities and securities fraud conspiracy, in violation of Title 18, United States Code, Section 371; Title 7, United States Code, Sections 9(1) and 13(a)(5); Title 17, Code of Federal Regulations, Section 180.1(a) and 240.10b-5; and Title 15, United States Code, Sections 78j(b) and 78ff (Count One);

b. Wire fraud conspiracy, in violation of Title 18, United States Code, Sections 1343 and 1349 (Count Two);

c. Wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2 (Count Three);

d. Securities and touting fraud conspiracy, in violation of Title 18, United States Code, Section 371; Title 15, United States Code, Sections 78j(b), 78ff, 77q(b), and 77x; and Title 17, Code of Federal Regulations, Section 240.10b-5 (Count Four);

e. Wire fraud conspiracy, in violation of Title 18, United States Code, Sections

1343 and 1349 (Count Five);

- f. Wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2 (Count Six); and
- g. Money laundering conspiracy, in violation of Title 18, United States Code, Sections 1956(h) and 1957(a) (Count Seven).

3. On or about June 23, 2021, JOHN DAVID McAFFEE, the defendant, died while in detention in Spain, where he was awaiting extradition to the United States.

4. Because JOHN DAVID McAFFEE, the defendant, died while this case was pending, and therefore before a final judgment was issued, the charges against him in the Indictment must be dismissed under the rule of abatement. *See United States v. Wright*, 160 F.3d 905, 908 (2d Cir. 1998).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

5. In light of the foregoing, the Government requests that an order of *nolle prosequi* be filed as to defendant JOHN DAVID MCAFEE.

Dated: New York, New York
March 28, 2022

E Hanft

Kiersten A. Fletcher
Elizabeth Hanft
Assistant United States Attorneys
(212) 637-2238/2334

Upon the foregoing recommendation, I hereby direct, with leave of the Court, that an order of *nolle prosequi* be filed as to defendant JOHN DAVID MCAFEE with respect to Indictment 21 Cr. 138 (LGS).

Dated: New York, New York
March 28, 2022

DW

DAMIAN WILLIAMS
United States Attorney
Southern District of New York

SO ORDERED:

HONORABLE LORNA G. SCHOFIELD
United States District Judge
Southern District of New York

Dated: New York, New York
_____, 2022